IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WISCONSIN
GREEN BAY DIVISION DIVISION

Bruce Edwards Plaintiff, v. Clemco Industries Corporation, a corporation, Defendants.	Case No.

COMPLAINT

Now comes the plaintiff, Bruce Edwards (hereinafter "Plaintiff"), by and through his attorneys, Cascino Vaughan Law Offices, Ltd., and complains against defendants Clemco Industries Corporation, a corporation, as follows:

JURISDICTION

1. Plaintiff is an adult citizen and resident of Wisconsin and resides in Manitowoc, Wisconsin.
2. Defendants are all corporations, none of which is incorporated in or has its principal place of business in the State of Wisconsin, and at all times relevant to the allegations contained herein were engaged in the business of designing, manufacturing, mining and selling silica and/or silica-containing products and/or equipment and machinery which utilized silica during it's operation, hereinafter referred to as "silica products." Please refer to the attached Exhibit A for the state of incorporation and principal place of business of each defendant.
3. Jurisdiction is based on diversity of citizenship of the parties hereto under Title 28, United States Code, §1332.
4. The amount in controversy exceeds the sum of Seventy-Five Thousand Dollars ($75,000), exclusive of interest and costs.

5. Venue is proper pursuant to Title 28, United States Code, §1391.

GENERAL ALLEGATIONS

6. Plaintiff during the course of his employment as a Sandblaster at various job sites, including those listed on the attached Exhibit B was exposed to silica dust emanating from the silica products and/or equipment which utilizes silica during it's operation which was sold, manufactured, mined, distributed, packaged, installed or otherwise placed into commerce by defendants.

7. Plaintiff was ignorant of the dangerous nature of silica and of the nature of the risks incurred by workers working with or near silica products.

8. Plaintiff became aware of the silica-related condition and that said condition was caused by Defendants' wrongful conduct within the statute of limitations before the filing of this action.

9. As a direct and proximate result of the conduct of Defendants, Plaintiff developed and had been diagnosed with silicosis in May of 2008.

10. Plaintiff suffers great pain, physical impairment, great mental pain and anguish, is liable for large sums of money for medical and hospital care, and suffered losses to his personal property and possessions.

COUNT I - PRODUCTS LIABILITY - NEGLIGENCE

11. Plaintiff brings this count for negligence against all defendants and incorporates by reference all general allegations.

12. It was reasonably foreseeable that Plaintiff and other workers would be working with or in the proximity of defendants' silica products and be exposed to airborne silica dust.

13. Defendants had a duty to exercise reasonable care for the safety of Plaintiff and others who worked with or were exposed to the defendants' silica products.

14. Defendants knew or in the exercise of ordinary or reasonable care ought to have known

silica products and/or silica dust causes disease and/or death, and that Plaintiff did not know that silica products and/or silica dust was dangerous or harmful at the time of his exposures.

15. Each defendant breached its duty of care and was negligent, including without limitation in one or more of the following acts or omissions:

a. Failed to adequately warn Plaintiff or others of the health hazards of silica products and/or silica dust;

b. Failed to warn Plaintiff or others of the danger and harm of the silica products and/or silica dust after the products or equipment were installed at the premises;

c. Failed to investigate or test for the health effects of silica products and/or silica dust prior to distribution and sale;

d. Failed to instruct Plaintiff, his employers or others in the use of precautionary measures relating to silica-containing products and/or silica dust and/or equipment which utilizes silica during it's operation; and/or

e. Manufactured, mined, supplied, or installed unsafe products or equipment which utilizes silica during it's operation.

16. As a direct and proximate result of the acts and omissions of the product defendants above, Plaintiff was injured as described above.

COUNT II – PRODUCT LIABILITY - UNREASONABLY DANGEROUS PRODUCT

17. This cause of action is asserted against the manufacturing and supplying defendants.

18. The defendants' above-described silica products were manufactured, supplied and installed in an unreasonably dangerous condition presenting dangers to the life and health of the ultimate users thereof and to persons in the position of the Plaintiff.

19. At all relevant times, the defendants placed their silica products on the market knowing that they would be used without inspection for such unreasonably dangerous defects and defendants expected such silica products to reach Plaintiff and other users and consumers

without substantial change in the condition they were in when sold.

20. Plaintiff removed, installed, used and/or handled, or was otherwise exposed to, the supplying defendants' silica products in the conditions in which they left the possession or control of such defendants and in a manner that was reasonably foreseeable and/or anticipated by such defendants.

21. Defendants manufactured, supplied or installed a product, or equipment, that was unreasonably dangerous in nature in that it created silica dust, and in particular:

a. Was not accompanied by an adequate warning relating to the health hazards of silica products and/or silica dust;

b. Was not accompanied by instructions concerning precautionary measures to be taken to minimize the risk of health hazards associated with silica products and/or silica dust;

c. Was not subjected to adequate investigation regarding its hazards to health; and

d. Was improperly designed from an engineering air quality control viewpoint, and/or specified for, the use of silica..

22. Plaintiff's exposure to the unreasonably dangerous products manufactured, supplied and installed by the defendants proximately caused injuries set forth above.

COUNT III – DECLARATORY JUDGMENT

23. Defendants' conduct alleged herein occurred many years before certain changes in the Wisconsin Statutes affecting the law of joint and several liability, as set forth in §§895.045(1) and 895.85, Wis. Stats., were enacted as part of so-called "tort reform" in 1995.

24. Retroactive application of the 1995 legislation purporting to apply to the new versions of §§895.045(1) and 895.86, Wis. Stats, to defendants' tortious acts, which occurred many years before the effective date of such legislation, merely because this lawsuit was filed after the

effective date of such legislation, would materially and adversely affect the interests of plaintiff in this matter.

25. Retroactive application of the current versions of §§895.045(1) and 895.85, Wis. Stats., to the facts of this case would be unreasonable and unconstitutional, in violation of Article I, §10 and the Fifth and Fourteenth Amendments of the Constitution of the United States, and in violation of Article IV, §17(2) of the Constitution of the State of Wisconsin, and contrary to the Supreme Court of Wisconsin's ruling in Martin v. Richards, 192 Wis. 2d 156, (Docket #91-0016, 1995).

PRAYER FOR RELIEF

26. Plaintiff prays for relief as follows:

a. Judgment against defendants, jointly and severally, for compensatory and general damages.

b. Such further legal and equitable relief as the Court orders to do justice in this case; costs and disbursements of this action.

JURY TRIAL DEMAND

Plaintiff hereby demands a trial by a jury of 6.

Dated: January 31, 2011

s/ Michael P. Cascino
One of the Plaintiff's Attorneys

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